

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

UNITED STATES OF AMERICA,

Plaintiff,

v.

No. CIV-96-0737 JP/LCS  
CR-90-285 SC

ALFONSO PEDRAZA,

Defendant.

**MEMORANDUM OPINION AND ORDER**

This matter is before the Court on the latest in a series of post-judgment motions filed by Defendant, this one being a motion to reopen (CIV Doc. 90; CR Doc. MV 58) filed November 17, 2005. The motion seeks relief from an order entered by this Court on August 23, 2002. The 2002 order (CV Doc. 77; CR Doc. MV 54) denied a motion pursuant to Fed. R. Civ. P. 60(b) that sought relief from a ruling by the Court of Appeals for the Tenth Circuit. Defendant argues that, under *Gonzalez v. Crosby*, --- U.S. ---, 125 S. Ct. 2641 (2005), both this Court and the Court of Appeals ruled erroneously in the earlier proceedings, and he asks the Court to adjudicate a claim in his 28 U.S.C. § 2255 motion. Defendant's motion to reopen is construed as a motion for relief from judgment under Fed. R. Civ. P. 60(b). *See Burns v. C.I.A.*, No. 93-5153, 1994 WL 36770, at \*\*1 (10th Cir. 1994).

Defendant argues that the *Gonzalez* decision requires this Court to vacate its prior refusal to reconsider and to revisit its dismissal of his § 2255 motion, even though the dismissal was affirmed on appeal. In *Gonzalez*, a § 2254 habeas corpus proceeding, the Supreme Court held "that a Rule 60(b)(6) motion . . . that . . . challenges only the District Court's failure to reach the merits . . . can therefore be ruled upon by the District Court without precertification by the Court of Appeals."

*Gonzalez*, --- U.S. at ---, 125 S. Ct. at 2651. Because this Court ruled on each of Defendant's earlier Rule 60(b) motions and did not transfer the motions to the Court of Appeals for precertification, the *Gonzalez* ruling has no application here. The Court will deny Defendant's motion to reopen.

IT IS THEREFORE ORDERED that Defendant's motion to reopen (CIV Doc. 90; CR Doc. MV 58) filed November 17, 2005, construed herein as a motion for relief from judgment under Fed. R. Civ. P. 60(b), is DENIED.

  
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SENIOR UNITED STATES DISTRICT JUDGE